In the High Court of Punjab and Haryana, at Chandigarh.

1. **C.W.P. No.9027 of 1987**

Date of Decision: 28.11.2007

Om Parkash Suman and Another …Petitioners

Versus

State of Punjab and Others …Respondents

2. **C.W.P. No.2900 of 1987**

Ved Parkash Duggal and Others …Petitioners

Versus

State of Punjab and Others …Respondents

3. **C.W.P. No.3154 of 1987**

Rama Nand Sharma and Another …Petitioners

Versus

State of Punjab and Others …Respondents

4. **C.W.P. No.3416 of 1987**

Behari Lal Mittal and Another …Petitioners

Versus

State of Punjab and Others …Respondents

5. **C.W.P. No.3458 of 1987**

Siri Gopal and Another …Petitioners

Versus

State of Punjab and Others …Respondents

6. **C.W.P. No.3466 of 1987**

Jagmohan Bawa …Petitioner

Versus

State of Punjab and Others …Respondents

7. **C.W.P. No.3552 of 1987**

Surinder Kumar Prasher and Another …Petitioners

Versus

State of Punjab and Others …Respondents

8. **C.W.P. No.3883 of 1987**

Nand Lal Sharma and Another …Petitioners

Versus

State of Punjab and Others …Respondents

AND

9. **C.W.P. No.5375 of 1990**

Ganga Bishan Kaura …Petitioner

Versus

State of Punjab and Others …Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. Vipul Jindal, Advocate
for the petitioners in C.W.P. Nos. 9027 of 1987
5375 of 1990.

Mr. P.S.Kang, Advocate
for the petitioners in C.W.P. No. 3458 of 1987.

Mr. Ram Lal Gupta, Additional Advocate
General Punjab, for the official respondents.

Mr. Ashok Aggarwal, Senior Advocate
with Mr. Piyush Bansal, Advocate
for respondent No.7 in C.W.P. No. 3466 of 1987.

RAJESH BINDAL, J.

This order shall dispose of a bunch of Civil Writ Petition Nos. 9027, 2900, 3154, 3416, 3458, 3466, 3552, 3883 of 1987 and 5375 of 1990, involving the same questions of facts and law.

The facts have been noticed from C.W.P. No. 9027 of 1987.

The petitioners therein were working as Vaidyas Incharge in the scale of Rs.750-1300. The private respondents were also working with the petitioners in the same cadre and scale. They were governed by Punjab Ayurvedic Department (Class-III Technical) Services Rules, 1963 (for short "the 1963 Rules"). The petitioners No.1 and 2 have been shown at serial Nos. 29 and 54, respectively, whereas the private respondents No. 5 to 8 have been shown at serial Nos. 55, 68, 75 and 76, respectively, in the seniority list in the cadre of Vaidyas (Annexure P1). The educational qualification required for appointment as Vaidya Incharge, in terms of the 1963 Rules, is a diploma or degree in Ayurveda from any recognised University or Board of Indian System of Medicines, established by Law in India or any Teaching Institute recognised by the Government. The petitioners being qualified were appointed as such. The petitioners No.1 obtained degree in Ayurvedacharya (four years regular course) from Government Ayurvedic College, Punjab, Patiala, in the year 1955, whereas petitioner no.2 got the qualification of Vaidya Vachaspati (four years regular course) from Dayanand Ayurvedic College, Jalandhar, in the year 1957.

In 1978, new posts of District Ayurvedic and Unani Officers were created. As the same did not form part of the 1963 Rules, the Secretary to the Government of Punjab, Health and Family Planning Department, issued a

memo dated February 17, 1978, (Annexure P2) prescribing that Vaidyas having a degree of five or more years of regular course in Ayurveda would be eligible for appointment as District Ayurvedic and Unani Officers.

It is further averred in the petition that the period of study for award of Ayurveda degrees varied from time to time. Upto the year 1959, the said degree course was of four years' duration, thereafter upto the year 1975, the duration of the course was five and a half years and further upto the year 1987, the duration of the course was increased to six and a half years and at the time of filing of the writ petition, the same was again reduced to four and a half years. The petitioners having passed their Ayurveda degree course before the year 1959, as per the course study at that time the duration was four years. Under these circumstances, the challenge in the petitions is to the prescription of the qualification of degree with five years or more course study and further challenge to the promotions as District Ayurvedic and Unani Officers to the Vaidyas Incharges, who were junior to the petitioners.

The claim made by the petitioners is contested by the respondents with the plea that it is the wisdom of the employer to fix any qualification for any post and the employee does not have any role to play in the same. The object in fixing the educational qualification of degree in Ayurveda with course of five and half years and more is to have more qualified persons on the higher post.

I have heard learned counsel for the parties and with their assistance have perused the paper book.

Learned counsel for the petitioners vehemently argued that action on the part of the respondents in prescribing the qualifications of degree with course of five years or more of study is clearly discriminatory and violative of Articles 14 & 16 of the Constitution of India as the same does not have any nexus with the object sought to be achieved. Merely because at the time when the petitioners passed degree course of Ayurveda the same was of less than five years, they cannot be made to suffer. They cannot be discriminated in the grant of promotion qua the candidates in the same cadre, who have passed degree course of five years or more duration. The effort is only to favour certain employees, which cannot be permitted.

Reliance has been placed upon the following judgments:-

a) ***The State of Punjab v. Lekh Raj Bowry M.A. Ayurveda Lankar and others 1967 Service Law Reporter 816 (P&H);***

b) ***Roshan Lal Tandon v. Union of India and others 1967 Service Law Reporter 832 (SC);***

c) ***N. Abdul Basheer and Others v. K.K. Karunakaran and others AIR 1989 Supreme Court 1624;***

d) ***Dr. Braham Dutt v. State of Haryana 1991(3) Service Cases Today 125 (P&H);*** AND

e) ***Puran Singh v. Punjab State Electricity Board, Patiala 2001 (4) Service Cases Today 257 (P&H).***

In ***N. Abdul Basheer's case*** *(supra)*, Hon'ble the Supreme Court while dealing with an identical issue where for the purpose of promotion to the post of Second Grade Excise Inspectors from the post of Excise Preventive Officers, quota was prescribed for graduate and non-graduate Excise Preventive Officers, which was held to be discriminatory. While dealing with the issue, Hon'ble the Supreme Court opined as under:-

> "13.....This is not a case where the cadre of officers was kept in two separate divisions. It was a single cadre, and they were all equal members of it. There is no evidence that graduate Preventive Officers enjoyed higher pay than non-graduate Preventive Offices. The High Court has noted that the nature of the duties of Preventive Officers whether graduate or non-graduate was identical, and both were put to field work. Non-graduate Preventive Officers were regarded as competent as graduate Preventive Officers. This is no evidence of any special responsibility being vested in graduate Preventive Officers. Once they were promoted as Excise Inspectors there was no distinction between graduate and non-graduate Excise Inspectors.
>
> 14. In our opinion the learned Single Judge as well as the Division Bench are right in holding that the prescription of a ratio of dividing the quota of promotion between graduate Preventive Officers and non-graduate Preventive officers is invalid on the ground that it violates Arts. 14 and 16 of the Constitution.
>
> 15. The other contention raised before the High

> Court, namely that the ratio 1:3 between graduates and non-graduates is supportable on the ground that the recognition of graduation is recognition of merit, and that more merit in the post of Excise Inspectors would be conducive to better administrative efficiency, is shortly disposed of. Ordinarily, it is for the Government to decide upon the considerations which, in its judgment, should underline a policy to be formulated by it. But if the considerations are such as prove to be of no relevance to the object of the measure framed by the Government it is always open to the Court to strike down the differentiation as being violative of Arts. 14 and 16 of the Constitution. In the present case, we have already commented on the circumstances that the conditions of employment and the incidents of service recognise no distinction between graduate and non-graduate Officers and that for all material purposes they are effectively treated as equivalent. Accordingly, this contention must also be rejected".

While dealing with the issue of promotion to higher post prescribing different quotas for the candidates who got promoted to the source cadre from two different cadres, Hon'ble the Supreme Court opined that prescription of such a quota is violative of Articles 14 and 16 of the Constitution of India as no discrimination can be made in favour of recruits from one source against the recruits from other source in the matter of further promotion as once they are absorbed in one cadre they formed one class.

A Division Bench of this Court in ***Lekh Raj Bowry's case*** *(supra)* while dealing with an issue where from two sources the employees were unified into one cadre and thereafter they were sought to be discriminated for further opportunities. It was opined as under:-

> "Though some of the Hakims and Vaidyas may have started dissimilarly at the time of their appointment in different States, they had not continued dissimilarly, but had after their being unified into one single cadre in the same time scale of pay, been appointed to the newly formed cadre in the united Punjab, irrespective of their

> initial educational qualifications. Once this had happened, some members of the unified cadre could not be treated dissimilarly as against others of the same cadre in the matter of their pay and other relevant conditions of service on the ground that some of them possessed higher or better qualifications. It is settled law that the equality of opportunity guaranteed by clause (1) of Article 16 of the Constitution does not end with the stage of initial appointment, but would inevitably govern all matters relating to employment including questions of emoluments, chances of promotion etc."

In ***Dr. Braham Dutt's case*** *(supra)*, the issue was regarding grant of advance increments and pay scales to the persons of the same cadre on the basis of different qualifications, while holding the same to be illegal, this Court opined as under:-

> "Bachelor in Indian Medicine and Surgery from Examining Body, Ayurvedic and Unani System of Medicine, Delhi, is a recognised degree which is equivalent and is treated equivalent to B.A.M.S./G.A.M.S for appointment to the post of Vaidya/A.M.O. Otherwise also, the qualification B.I.M.S possessed by the petitioner and B.A.M.S./G.A.M.S qualification are equivalent and the petitioner performs the same and similar duties and responsibilities as compared to the Vaidya/A.M.O possessing G.A.M.S/B.A.M.S degrees. Under the circumstances the respondents are not justified in discriminating between the persons possessing the degree of B.I.M.S and B.A.M.S/G.A.M.S in granting advance increments and pay scales between persons of the same cadre. A qualification which is considered by the respondents equivalent for the purpose of initial appointment cannot be treated differently while granting advance increments or while making promotions in future. Granting of two advance increments to B.A.M.S/G.A.M.S and depriving the other persons who possess equivalent qualification of B.I.M.S

> is arbitrary and thus violative of Articles 14 and 16 of the Constitution of India"...

It is not disputed in the present case that the petitioners and the private respondents are members of the same cadre of Vaidya Incharge. It is not the case of the respondents that while in the same cadre any differential treatment was being given to them by assigning them duties or by giving them different pay scales. They were bring treated as equal members of same cadre with a common seniority list drawn. In the matter of promotion to the post of District Ayurvedic and Unani Officers, they were sought to be discriminated merely on the ground that degree of Ayurvedacharya obtained by them had duration of course of less than five and half years. The averments made by the petitioners to the effect that during different periods, duration of the course for degree remained different is not denied. Merely because the petitioners had obtained the degree at a time when the duration of the course was less than five and half years, as prescribed for the purpose of promotion to the post of District Ayurvedic and Unani Officers, they cannot be discriminated qua the candidates who had obtained the degree during the period when the duration of the course was more than five and half years.

If the principles of law enunciated in the above referred cases are applied in the facts and circumstances of the case, the inescapable conclusion is that the action of the respondents in promoting the juniors as District Ayurvedic and Unani Officers is clearly violative of Articles 14 and 16 of the Constitution of India as the members of one cadre cannot possibly be discriminated for the purpose of further promotion on the basis of different qualification acquired by them merely on the basis of the fact that the duration of the same course passed by them at a relevant time was of lesser duration. No judgment taking contrary view was cited by learned counsel for the respondents.

No other point has been urged.

Accordingly, the writ petitions are allowed, the action of the respondents in promoting the persons junior to the petitioners merely on the basis of their having obtained degree of Ayurvedacharya for a duration of more than five and half years of course is held to be illegal and arbitrary. The respondents are directed to consider the cases of the petitioners for promotion as District Ayurvedic and Unani Officers from the date their juniors were promoted. It is submitted before this Court, the petitioners as well as the

private respondents have already retired from the service. Accordingly, the respondents are directed to fix the notional seniority of the petitioners and grant them consequential benefits and pay the arrears within a period of four months from the date of receipt of certified copy of this order. The petitioners shall also be entitled to re-fixation of their pensionary benefits.

(Rajesh Bindal)
Judge

November 28, 2007
"DK"

(Refer to Reporter)